



# THE NAVAJO NATION

RUSSELL BEGAYE **PRESIDENT**  
JONATHAN NEZ **VICE PRESIDENT**

Nov. 13, 2017

Alexis Strauss, Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

**RE: Tronox Navajo Abandoned Uranium Mines Future Funding for Proposed Projects  
Request for Government-to-Government Consultation**

Dear Ms. Strauss:

I am writing regarding the Navajo Nation's concerns relating to use of the settlement funds received by USEPA Region 9 in the settlement of the Tronox v. Anadarko litigation ("Tronox Settlement"). In addition, this letter responds to the request from USEPA Region 9 to comment on the FY 2018 Proposed Projects for the Tronox Navajo Abandoned Uranium Mines.

The Tronox Settlement funds are limited, and no-one knows at this stage whether the recovered funds will be adequate to address all of the Tronox uranium mine sites and associated contamination, including groundwater. We are particularly concerned by potentially high costs to address contamination in the Cove area, which present significant challenges of access and disposal due to the rugged terrain in that area.

For this reason, we feel that it is very important to exercise caution in approving expenditure of Tronox Settlement funds, until we have a better sense of the total project costs.

The Navajo Nation believes that the United States government is the responsible party for all of the uranium mines and mills. Until and unless the United States commits to unconditionally funding the unrecovered costs for cleanup of contamination associated with uranium mining and processing on the Navajo Nation, we intend to carefully scrutinize proposed expenditures of Tronox Settlement funds, and to evaluate them based upon the interests of the Navajo Nation.

Your staff in Region 9 have met regularly with staff from the Navajo Nation Superfund Program and the Navajo Abandoned Mine Lands Program. We appreciate their efforts to engage and inform the Navajo Nation. At this time, the Tronox uranium mines project, and the Navajo Abandoned Uranium Mines project as a whole, are growing. All of us are facing significant acceleration of our efforts due to the number of parties involved and the number of sites being addressed all over the Navajo Nation.

For these reasons, we are asking for a more robust relationship between Region 9 and the Navajo Nation to discuss pending and future uses of the Tronox Settlement funds. Specifically, we request annual government-to-government consultation at the level of the Navajo Office of the President and Vice-

President (“OPVP”) and the Regional Administrator to discuss proposed projects and funding levels prior to each fiscal year, beginning with FY2019.

#### Use of Tronox Settlement Funds for Region 6 Projects

Although the list of mines in the Tronox Settlement includes a number of mines that are not within the Navajo Nation reservation, there is no question that the bankruptcy claims asserted by USEPA Region 9 and the Navajo Nation, and the settlement of those claims, were intended to address contamination from past mining and processing within the Navajo Nation.

The projects for which USEPA Region 6 are the lead are not within the Navajo reservation. To date, the evidence we have seen suggests that the mines and associated contamination being studied by Region 6 have limited impact on the Nation and the Diné people. While we understand that expenditure of Tronox funds on study and remediation of the mines listed in the settlement is an authorized use of the settlement funds, we nevertheless believe that they should not be a funding priority at this time.

This letter therefore reflects our desire to ensure that the funds from the Tronox Settlement are used, first and foremost, to protect the Navajo people and their lands, as was intended.

#### Ambrosia Lake Mines

It appears that Region 6 will soon complete the RSE reports and EE/CAs for the Ambrosia Lake Tronox Mines. Region 6 is to be commended for its efficient work on this project. These RSEs will provide needed information on the costs of potential cleanup options for these mines.

At our recent quarterly meeting with Regions 6 and 9, we asked for meetings and site visits with Region 6 in the Ambrosia Lake area prior to further funding or work on this project. We would like those meetings to include a thorough discussion of the impacts, if any, that these mines may have on Navajo residents in the area. Dr. Donald Benn, Director of the Navajo Nation EPA, will contact Regions 6 and 9 to schedule these meetings and visits.

We also would like to see Region 6 issue notice letters to Rio Algom and to other successors to Kerr-McGee, if any, regarding their potential liability for these mines. If the Tronox funds are not adequate for cleanup of all contamination from the listed mines, other parties should be expected to provide funding for any shortfall. We request that the EE/CAs currently being prepared do not include recommendations or preferred alternatives for cleanup.

As you know, the Diné Uranium Remediation Advisory Commission (“Uranium Commission”) will soon begin its official work. OPVP has selected a candidate for the Executive Director of the Uranium Commission, and we anticipate that the Commission will begin formal activities soon. One of the major tasks of the Uranium Commission will be to consider the problem of disposal of uranium mine wastes and to make recommendations to the President and the Council on these difficult decisions. The Navajo Nation wishes to have the benefit of the Commission’s recommendations prior to reviewing or commenting upon permanent cleanup options, and prior to any USEPA cleanup decisions for the Tronox uranium mines.

We further request and recommend that once the RSEs and EE/CAs (without preferred alternatives) are completed for the Ambrosia Lake Tronox Mines, no decisions be made on further response actions, other than any interim actions that might be agreed upon between USEPA and the Navajo Nation. Once we have progressed sufficiently with evaluation of other Tronox mines, particularly those in the Cove area, preferred alternatives may be developed.

This will allow us to have a better understanding of the likely costs for remediation of all of the contamination related to the Tronox mines, prior to committing limited cleanup funds to those mines that are outside of the Navajo reservation.

We do not agree to further commitment of funds to the Region 6 Ambrosia Lake Mines project until the meetings and site visits discussed above have occurred, after which we will have a discussion of appropriate funding priorities and levels based upon impacts of the mines on the Navajo Nation and the Diné people.

#### San Mateo Creek Groundwater Basin

The San Mateo Creek groundwater issues are serious and deserve attention. However, studies have shown that the groundwater contamination is not moving toward the Navajo Nation and is not impacting the Nation. Groundwater studies and remediation are expensive undertakings. Given these considerations, we do not consider this project to be a priority for use of the Tronox settlement funds.

Furthermore, it appears that many sites other than the mines listed in the Tronox settlement also contribute to the San Mateo Basin groundwater problems. To the best of our knowledge, Region 6 has made no effort to obtain financial contribution from the parties responsible for those non-Tronox sites, nor from other potential Kerr-McGee successors, to the costs of this groundwater study. Despite our inquiries regarding enforcement plans, Region 6 has declined to provide any concrete information, nor even a timetable for enforcement action.

We therefore request that no Tronox Settlement funds, other than those authorized in the past, be spent on the San Mateo Creek Groundwater Basin project. We recommend that Region 6 seek other funding sources for this work. As the anticipated costs for the overall Tronox project come into focus, it may be possible to revisit this decision. However, we emphasize that given the limited impact of this contamination on the Navajo Nation, we are unlikely to consider this project to be a priority for the use of Tronox Settlement funds in the future.

#### FY2018 Funding Request

With regard to the Region 9 proposed projects for FY2018, we have a concern regarding the use of Tronox Settlement funds for the Program Management Plans ("PMPs") for both USEPA and the Navajo AUM team. We request that the PMPs be put on hold until USEPA and the Navajo Nation meet to discuss past communications regarding the funding to be used for these projects.

The request for Tronox funding for Region 6 projects is \$100,000 (not including funds previously requested and approved). We understand that this request is for completion of the ongoing RSE and preparation of a draft EE/CA. As discussed above, we request that no further funds be committed to Region 6 projects at this time. After meetings and site visits at the Ambrosia Lake Tronox Mines, we will discuss whether further funds should be allocated for those mine sites. We also request that the EE/CAs for the Ambrosia Lake Mines not include a proposed or recommended alternative, as requested above.

#### Future Projects and Funding

We request that proposals for future funding for both ongoing and new projects be the subject of government-to-government consultation between USEPA Region 9 and the Navajo Nation at the OPVP level. This consultation should take place sufficiently prior to the applicable fiscal year to allow for review, discussion and comment by the Navajo Nation. We also request that each proposal list the amount of past funding requested, past funding approved, current funding requested, anticipated future funding requests, a detailed breakdown of the requested costs, and the timeline and total anticipated costs for each project.

As discussed above, we also recommend and request that no Tronox funding be allocated for Region 6 projects, until the overall costs are clarified and Region 6 has taken enforcement actions against other responsible parties. At that time, we will review further funding requests in light of other needs.

These requests intended to ensure that we have sufficient time and information for a robust discussion of the funding proposals, so that timely decisions on prioritization of funding may be made after full consideration of the matters discussed above.

We appreciate your attention to these matters and we look forward to our continued cooperative work on the Tronox Navajo Abandoned Uranium Mines project.

Sincerely,

**THE NAVAJO NATION**

A handwritten signature in black ink, appearing to read "Russell Begaye", written in a cursive style.

Russell Begaye, *President*

Cc (by email):

Enrique Manzanilla, Director, USEPA Region 9 Superfund Division

Sean Hogan, USEPA Region 9

Linda Reeves, USEPA Region 9

Edwin Poalinelli, USEPA Region 9

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